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punished by fine, imprisonment, or both. (See, for example 18 U.S.C. 1001.)”

[74 FR 28405, June 15, 2009, as amended at 74 FR 63992, Dec. 7, 2009]

§ 30.16 Q-16: What is the Office of the Special Master for TARP Executive Compensation, and what are its powers, duties and responsibilities?

(a) *The Office of the Special Master for TARP Executive Compensation.* The Secretary of the Treasury shall establish the Office of the Special Master for TARP Executive Compensation (Special Master). The Special Master shall serve at the pleasure of the Secretary, and may be removed by the Secretary without notice, without cause, and prior to the naming of any successor Special Master. The Special Master shall have the following powers, duties and responsibilities:

(1) *Interpretative authority.* The Special Master shall have responsibility for interpreting section 111 of EESA, these regulations, and any other applicable guidance, to determine how the requirements under section 111 of EESA, these regulations, and any other applicable guidance, apply to particular facts and circumstances. Accordingly, the Special Master shall make all determinations, as required, as to the meaning of such guidance and whether such requirements have been met in any particular circumstances. In addition, a TARP recipient or a TARP recipient employee may submit a request, in accordance with paragraph (c)(3) of this section, for an advisory opinion with respect to the requirements under section 111 of EESA, these regulations and any other applicable guidance.

(2) *Review of prior payments to employees.* Section 111(f) of EESA provides that the Secretary shall review bonuses, retention awards, and other compensation paid before February 17, 2009, to employees of each entity receiving TARP assistance before February 17, 2009, to determine whether any such payments were inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest. Section 111(f) of EESA provides that, if the Secretary makes such a determination, the Secretary shall seek to negotiate with the

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TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses. The Special Master shall have the responsibility for administering these provisions, including the identification of the payments that are inconsistent with the purposes of EESA or TARP, or otherwise contrary to the public interest, and the Special Master shall have responsibility for the negotiation with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses. The Special Master shall make this determination by application of the principles outlined in paragraph (b) of this section. The Special Master's administration of these provisions may provide for the scope of review by the Special Master of a payment, including a limited review or no review, depending on the payment amount, the type of payment, the overall compensation earned by the employee during the relevant period, a combination thereof, or such other factors as the Special Master may determine, where the Special Master determines that such factors demonstrate that such payments are not, or are highly unlikely to be, inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest, or that renegotiation of such payments is not in the public interest. The Special Master may request in writing any information from TARP recipients necessary to carry out the review of prior compensation required under section 111(f) of EESA. TARP recipients must submit any requested information to the Special Master within 30 days of the request.

(3) *Approval of certain payments to employees of TARP recipients receiving exceptional financial assistance.* (i) *SEOs and most highly compensated employees.* The Special Master shall determine whether the compensation structure for each SEO or most highly compensated employee of a TARP recipient receiving exceptional assistance, including the amounts payable or potentially payable under such compensation structure, will or may result in payments that are inconsistent with

the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest. The Special Master shall make such determinations by applying the principles outlined in paragraph (b) of this section, subject to the requirement that the compensation structure and payments satisfy the applicable limitations under § 30.10 (Q-10). This requirement shall apply to any compensation accrued or paid during any period the SEO or most highly compensated employee is subject to the limitations under § 30.10 (Q-10). Initial requests for such approval must be submitted no later than August 14, 2009. The Special Master's administration of these provisions may provide for the Special Master's scope of review, including a limited review or no review, of a portion of a compensation structure or payment depending on the amount of such payments, the type of such payments, the overall compensation earned by the employee during the relevant period, a combination thereof, or such other factors as the Special Master determines, if the Special Master has determined that such factors demonstrate that such payments are not, or are highly unlikely to be, inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest. The Special Master shall issue a determination within 60 days of the receipt of a substantially complete submission. The TARP recipient must make a further request for approval to the extent the compensation structure for any SEO or most highly compensated employee, including the amounts that are or may be payable, for any SEO or highly compensated employee is materially modified. In reviewing compensation structures and compensation payments for any period subject to Special Master review, the Special Master may take into account other compensation structures and other compensation earned, accrued or paid, including such compensation and compensation structures that are not subject to the restrictions of Section 111 of EESA pursuant to section 111(b)(3)(D)(iii) (see § 30.10(e)(2) (Q-30.10(e)(2) (certain legally binding rights under valid written employment contracts)), and amounts that were ac-

crued or paid prior to June 15, 2009 and are therefore not subject to review by the Special Master.

(ii) *Other executive officers and most highly compensated employees.* With respect to any employee who is either an executive officer (as defined under the Securities and Exchange Act Rule 3b-7) or one of the 100 most highly compensated employees of a TARP recipient receiving exceptional assistance (or both), who is not subject to the bonus limitations under § 30.10 (Q-10), the Special Master shall determine whether the compensation structure for such employees will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest. The Special Master shall make such determination through application of the principles outlined in paragraph (b) of this section. With respect to the scope of the required review, the Special Master shall determine only whether the compensation arrangements are adequately structured, and is not required to rule with respect to the amounts that are or may be payable thereunder. However, the TARP recipient may also request an advisory opinion with respect to the amounts that are or may be payable, which the Special Master may provide in his sole discretion. Notwithstanding the foregoing, if the total annual compensation to an employee complies with the rules applicable to an SEO under § 30.10 (Q-10) applied without any limits on the grant of long-term restricted stock, and the annual compensation other than long-term restricted stock does not exceed \$500,000 (or for 2009, \$500,000 prorated to reflect the remaining portion of 2009 after June 15, 2009), the compensation structure will automatically be deemed to meet the requirements and no prior approval by the Special Master will be required. For purposes of the \$500,000 limit, in determining annual compensation, all equity-based compensation granted in fiscal years ending after June 15, 2009 will be included in the calculation only in the year in which they are granted at their total fair market value on the grant date and all equity-based compensation granted in fiscal years ending prior to

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June 15, 2009 will not be included in the calculation of annual compensation. In addition, solely for purposes of applying the limit (and not for purposes of identifying the most highly compensated employees), the term annual compensation includes amounts required to be disclosed under paragraph (viii) of Item 402(a) of Regulation S-K of the Federal securities laws (change in the actuarial present value of benefits under a pension plan and above-market earnings on deferred compensation). The Special Master's administration of these provisions may provide for limited or no review of a portion of a compensation structure by the Special Master depending on the amount of potential payments, the type of such payments, the overall compensation earned by the employee during the relevant period, a combination thereof, or such other factors as the Special Master determines, where the Special Master has determined that such factors demonstrate that such payments are not, or are highly unlikely to be, inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest. Initial requests for such approval must be submitted no later than 120 days after publication of the final rule. Separate requests need not be submitted for each individual covered employee, but should be submitted for identified groups of employees subject to the same compensation structures to the extent possible as long as sufficient detail regarding individual compensation awards are provided as necessary to evaluate such employee's compensation structure. The Special Master shall issue a determination within 60 days of the receipt of a substantially complete submission. The TARP recipient must make a further request for approval to the extent the compensation structure, including the amounts that are or may be payable, for any executive officer is materially amended. In reviewing compensation structures for any period subject to Special Master review, the Special Master may take into account other compensation structures and other compensation earned, accrued or paid, including such compensation and compensation structures that are not sub-

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ject to the restrictions of Section 111 of EESA pursuant to section 111(b)(3)(D)(iii) (see § 30.10(e)(2) (Q-30.10(e)(2) (certain legally binding rights under valid written employment contracts)), and amounts that were accrued or paid prior to June 15, 2009 and are therefore not subject to review by the Special Master.

(iii) *Period from June 15, 2009 through final determination.* For the period from June 15, 2009 through the date of the Special Master's final determination, the TARP recipient will be treated as complying with this section if, with respect to employees covered by paragraph (a)(3)(i) of this section, the TARP recipient continues to pay compensation to such employees in accordance with the terms of employment as of June 14, 2009 to the extent otherwise permissible under this Interim Final Rule (for example, continued salary payments but not any bonus payments) and if, with respect to employees covered by paragraph (a)(3)(ii) of this section, the TARP recipient continues to pay compensation to such employees under the compensation structure established as of June 14, 2009, and if in addition the TARP recipient promptly complies with any modifications that may be required by the Special Master's final determination. However, the Special Master may take into account the amounts paid to an employee during such period in determining the appropriate compensation amounts and compensation structures, as applicable, for the remainder of the year.

(4) *Advisory opinions on compensation structures or compensation payments to employees of TARP recipients.* A TARP recipient or TARP recipient employee may request an advisory opinion from the Special Master as to whether a compensation structure is, or will or may result in payments that are, inconsistent with the purposes of EESA or TARP, or otherwise contrary to the public interest. In addition, the Special Master may become aware of compensation structures or payments at any TARP recipient for which it may be useful to provide an advisory opinion as to whether such structure or payments meets this standard. Accordingly, the Special Master shall have

the authority to render advisory opinions upon request or at the Special Master's initiative, as to whether a compensation structure is, or will or may result in payments to an employee that are inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest, or whether a compensation payment made, or to be made, was or will be inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest. If the Special Master renders an adverse opinion, the Special Master shall have the authority to seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the TARP recipient or the Federal government. Any advisory opinion shall reflect the Special Master's application of the principles outlined in paragraph (b) of this section. The Special Master shall not be required to render an advisory opinion in every instance, but may do so only where the Special Master deems appropriate and feasible in the context of the Special Master's other responsibilities. In any case, the Special Master shall render an opinion, or affirmatively decline to render an advisory opinion, within 60 days of the receipt of a substantially complete submission. The Special Master shall not be required to explain any decision to decline to render an advisory opinion.

(5) *Other designated duties and powers.* The Special Master shall have such other duties and powers related to the application of compensation issues arising in the administration of EESA or TARP as the Secretary or the Secretary's designate may delegate to the Special Master, including, but not limited to, the interpretation or application of contractual provisions between the Federal government and a TARP recipient as those provisions relate to the compensation paid to, or accrued by, an employee of such TARP recipient.

(b) *Determination of whether compensation is inconsistent with the purposes of section 111 of EESA or TARP or is otherwise contrary to the public interest—(1) Principles.* In reviewing a compensation structure or a compensation payment to determine whether it is inconsistent

with the purposes of section 111 of EESA or TARP or is otherwise contrary to the public interest, the Special Master shall apply the principles enumerated below. The principles are intended to be consistent with sound compensation practices appropriate for TARP recipients, and to advance the purposes and considerations described in EESA sections 2 and 103, including the maximization of overall returns to the taxpayers of the United States and providing stability and preventing disruptions to financial markets. The Special Master has discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment under consideration, such as whether a payment occurred in the past or is proposed for the future, the role of the employee within the TARP recipient, the situation of the TARP recipient within the marketplace and the amount and type of financial assistance provided. To the extent that two or more principles may appear inconsistent in a particular situation, the Special Master will determine the relative weight to be accorded each principle. In the case of any review of payments already made under paragraph (c)(2) of this section, or of any rights to bonuses, awards, or other compensation already granted, the Special Master shall apply these principles by considering the facts and circumstances at the time the compensation was granted, earned, or paid, as appropriate.

(i) *Risk.* The compensation structure should avoid incentives to take unnecessary or excessive risks that could threaten the value of the TARP recipient, including incentives that reward employees for short-term or temporary increases in value, performance, or similar measure that may not ultimately be reflected by an increase in the long-term value of the TARP recipient. Accordingly, incentive payments or similar rewards should be structured to be paid over a time horizon that takes into account the risk horizon so that the payment or reward reflects whether the employee's performance over the particular service

period has actually contributed to the long-term value of the TARP recipient.

(ii) *Taxpayer return.* The compensation structure, and amount payable where applicable, should reflect the need for the TARP recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the TARP recipient's future success, and ultimately to be able to repay TARP obligations.

(iii) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary, short-term and long-term incentives, as well as the extent to which compensation is provided in cash, equity or other types of compensation such as executive pensions, other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. The appropriate allocation may be different for different positions and for different employees, but generally, in the case of an executive or other senior level position a significant portion of the overall compensation should be long-term compensation that aligns the interest of the employee with the interests of shareholders and taxpayers.

(iv) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the TARP recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. The appropriate allocation and the appropriate performance metrics may be different for dif-

ferent positions and for different employees, but generally a significant portion of total compensation should be performance-based compensation, and generally that portion should be greater for positions that exercise higher levels of responsibility.

(v) *Comparable structures and payments.* The compensation structure, and amount payable where applicable, should be consistent with, and not excessive, taking into account compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization.

(vi) *Employee contribution to TARP recipient value.* The compensation structure, and amount payable where applicable, should reflect the current or prospective contributions of an employee to the value of the TARP recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the TARP recipient.

(2) *Further guidance.* The Secretary reserves the discretion to modify or amend the foregoing principles through notice, announcement or other generally applicable guidance, provided that such guidance shall apply only prospectively from its date of publication and shall not provide a basis for reconsideration of a determination of the Special Master, except as the Special Master deems appropriate in light of such modification or amendment.

(c) *Special Master determinations—*(1) *Initial determinations.* The Special Master shall provide an initial determination in writing, within 60 days of the receipt of a substantially complete submission, setting forth the facts and analysis that formed the basis for the determination. The TARP recipient shall have 30 days to request in writing that the Special Master reconsider the initial determination. The request for

reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determination. The Special Master must provide a final determination in writing within 30 days, setting forth the facts and analysis that formed the basis for the determination. If a TARP recipient does not request reconsideration within 30 days, the initial determination shall be treated as a final determination.

(2) *Final determinations.* In the case of any final determination that the TARP recipient is required to receive, the final determination of the Special Master shall be final and binding and treated as the determination of the Treasury.

(3) *Advisory Opinions.* An advisory opinion of the Special Master shall not be binding upon any TARP recipient or employee, but may be relied upon by a TARP recipient or employee if the advisory opinion applies to the TARP recipient and the employee and the TARP recipient and employee comply in all respects with the advisory opinion.

(d) *Submissions to the Special Master—*

(1) *Submission procedures.* Submissions to the Special Master may be made under such procedures as the Special Master shall determine. The Special Master may reserve the right to request further information at any time and a submission shall not be treated as substantially complete unless the Special Master has so designated.

(2) *Disclosure procedures.* Materials submitted to the Special Master and the initial and final determinations of the Special Master are subject to disclosure under the standards provided in the Freedom of Information Act (FOIA, (5 U.S.C. 552 *et seq.*)). In addition, the final determinations of the Special Master shall be disclosed to the public. The Special Master shall promulgate procedures for ensuring that disclosed materials have been subject to appropriate redaction to protect personal privacy, privileged or confidential commercial or financial information or other appropriate redactions permissible under the FOIA, which may include a procedure for the person or en-

tity making the submission to request redactions and to review and request reconsideration of any proposed redactions before such redacted materials are released.

§ 30.17 Q-17: How do the effective date provisions apply with respect to the requirements under section 111 of EESA?

(a) *General rule.* The requirements under this part with respect to sections 111(b), 111(c), 111(d) and 111(f) are effective upon June 15, 2009. The guidance under this part with respect to those sections supersedes any previous guidance applicable to a TARP recipient to the extent that guidance is inconsistent with those requirements, but supersedes that guidance only as of June 15, 2009. To the extent previous contractual provisions are not inconsistent with ARRA or the guidance under this part, those contractual provisions remain in effect and continue to apply in accordance with their terms.

(b) *Bonus payment limitation.* The bonus payment limitation provision under § 30.10 (Q-10) of this part does not apply to bonus payments paid or accrued by TARP recipients or their employees before June 15, 2009. Certain bonus payments may relate to a service period beginning before and ending after June 15, 2009. In these circumstances, the employee will not be treated as having accrued the bonus payment on or after June 15, 2009 if the bonus payment is at least reduced to reflect the portion of the service period that occurs after June 15, 2009. If the employee is an SEO or most highly compensated employee at the time the net bonus payment after such reduction would otherwise be paid, the amount still may not be paid until such time as bonus payments to that employee are permitted.

PART 31—TROUBLED ASSET RELIEF PROGRAM

Sec.

31.1 General.

Subpart A [Reserved]